

STATE OF MONTANA TERM CONTRACT

Department of Administration
State Procurement Bureau
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T.C. #: SPB04-755G
INTERRUPTIBLE NATURAL GAS/WBI – PINE HILLS YCF
This is an exclusive contract for the location listed.

CONTRACT TERM	FROM	October 1, 2003	CONTRACT STATUS	NEW (X)
	TO	September 30, 2004		RENEW ()
VENDOR ADDRESS	COMMERCIAL ENERGY OF MONTANA, INC. PO BOX 548 CUT BANK MT 59427-0548 Federal I.D. No. 84-1413218		ORDER ADDRESS	COMMERCIAL ENERGY OF MONTANA, INC. PO BOX 548 CUT BANK MT 59427-0548
ATTN:	RON PERRY		ATTN:	
PHONE:	(406) 873-3300		PHONE:	
FAX:	(406) 873-2598		FAX:	
E-MAIL:	ron.perry@commercialenergy.net		E-MAIL:	

PRICES: PER ATTACHED

DELIVERY: PER ATTACHED

F.O.B.: MILES CITY MDU TOWN BORDER STATION

TERMS: NET 30 DAYS

IFB/RFP No.: SPB04-755G

THOMAS M. GUSTIN, PROGRAM OFFICER

DATE:

AUTHORIZED SIGNATURE

Standard Terms and Conditions

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors may be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp>.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain

registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

1.0 DEFINITIONS

DKT	Dekatherm. One million BTUs measured on a dry basis.
Facility	Pine Hills Youth Correctional Facility (YCF), 4 N. Hanes Street, Miles City, MT 59301
Day	A twenty-four hour consecutive period commencing at 8:00 a.m. local (Mountain) time.
Month	Period extending from the beginning of the first day in a calendar month to the beginning of the first day in a succeeding month.

Interruptible Service

Gas service provided on a "best efforts" basis, wherein the supplier exerts the best possible effort to deliver required volumes of gas, and the facility exerts the best possible effort to consume said gas.

MDU	Montana-Dakota Utilities Company
CIG	Colorado Interstate Gas Company
WBI	Williston Basin Interstate Pipeline Company
FERC	Federal Energy Regulatory Commission

2.0 GENERAL TERMS AND CONDITIONS

2.01 SCOPE OF CONTRACT

This contract is between the State of Montana, State Procurement Bureau and Commercial Energy of Montana, Inc. to supply Interruptible Natural Gas to the Pine Hills Youth Correctional Facility for the period and pricing stated herein.

This document establishes a contract to supply the Pine Hills Youth Correctional Facility (YCF), Miles City, Montana, hereafter referred to as "facility", with interruptible natural gas service for the period from October 1, 2003 through September 30, 2004, with the possibility of two one-year renewals on a mutually agreeable basis. The State reserves the right to negotiate a lower price with the contractor, on a mutually agreeable basis, for the periods of October 1, 2004 through September 30, 2005, and in subsequent renewal years if the contract is renewed past September 30, 2004.

The natural gas furnished under this resulting contract will be delivered to the MDU Miles City town border station. The facility will arrange for its own gas transportation contract with MDU to move the gas from the town border station to the facility meter. The contract is exclusive for the location listed.

Gas usage statistics for the previous 24 months are located in Section 4.0 of this document. Quantities stated are estimates only and in no way constitute an obligation on behalf of the State. Actual usage may vary depending upon weather and environmental and operational factors. The Pine Hills YCF facility is primarily a heating load customer, and is presently equipped with a backup heating oil system.

2.02 BASIS OF AWARD

This contract was awarded based on the 1) lowest fixed price of interruptible natural gas per DKT, on a dry basis, for the period of November 1, 2003 through March 31, 2004, (exclusive of WBI I-T rates), to the Miles City MDU border station, plus, 2) the price margin plus/minus the CIG index, to the Miles City MDU border station for the months of October 2003, and April 1 through September 30, 2004.

The September 2003 CIG index price of \$4.31/DKT was used as a basis for comparing the indexed portion of the bids, for award purposes only.

Preferences for residency or in-state manufacture were NOT being considered for award per 2.5.403 (e), Administrative Rules of Montana.

2.03 GOVERNMENTAL AUTHORITY

All contract terms and conditions for the purchase of natural gas are subject to valid present and future legislation, regulations, tariffs, ordinances and orders issued by the Montana Public Service Commission, FERC, or any other governmental authority having jurisdiction.

The contractor is responsible for securing any other permits, and all applicable licensing in accordance with federal, state and/or any other jurisdictional regulatory entities.

2.04 DELIVERY PRESSURE

The gas purchased shall be delivered at a pressure sufficient to effect delivery into the WBI pipeline facilities.

2.05 TERM OF CONTRACT

This document establishes a contract for an indexed price (plus/minus CIG) for interruptible natural gas service for the months of October 2003, and April through September 2004, and a fixed price contract for interruptible natural gas service for the period from November 1, 2003 through March 31, 2004, with the possibility of two one-year mutually agreeable extensions. At the end of the contract or renewal period, the State reserves the right to purchase natural gas, upon mutual agreement with the contractor, on a month-to-month basis at the established contract price per DKT or an agreed upon indexed price until such time as a new contract is in effect. The State notified the successful bidder within two (2) hours after the bid opening.

2.06 QUALITY

The quality of gas delivered shall meet all applicable standards of MDU's tariffs as filed with the Montana Public Service Commission and/or FERC.

2.07 WARRANTY OF TITLE TO GAS

The contractor warrants title to all gas delivered under this contract, and has the right to sell gas, and that the gas is free and clear of all liens, encumbrances and claims whatsoever. Contractor further warrants that it possesses the right and title to sell the gas delivered at the time of delivery, and will indemnify the State of Montana and its facilities, and hold them harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas or to royalties, taxes, license fees or charges.

2.08 TERMINATION

The State reserves the right to cancel any contract for failure on the part of the contractor to comply with the terms and conditions stated herein by giving thirty (30) days written notification to the contractor. Written notification will be made via certified mail. The State may not be held liable for any losses resulting from contract cancellation.

2.09 PROPRIETARY INFORMATION

No information provided to the State in the Term Contract Invitation for Bid, including supply and pricing arrangements, will be considered proprietary information.

2.10 RESPONSIBILITY FOR GAS

Transfer of natural gas ownership from the contractor to the State shall occur at the Miles City MDU town border station.

2.11 FORCE MAJEURE

In the event of either party's being rendered wholly or in part by force majeure unable to carry out its obligations under this contract, upon giving written notice and reasonably full particulars to the other party, then the obligations of the parties, such as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused. Such causes or contingencies affecting the performance of this contract by either party, however, shall not relieve it of liability in the event of its concurring material negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes and contingencies affecting the performance of this contract relieve either party from its obligations to make payments of amounts then due hereunder, nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing to the other party as soon as possible after the occurrence relied on.

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances (including those affecting the parties transporting gas for the State or for the contractor), acts of the public enemy or terrorist, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, explosion or other casualty, floods, washouts, arrests and restraints of government (federal, state, civil or military) and of people, and civil disturbances, not reasonably within the control of the party claiming suspension and which, by the exercise of due diligence, such party is unable, wholly or in part, to prevent or overcome. In no event shall the term "force majeure" mean or include any cause, which by the exercise of reasonable diligence the party claiming suspension could overcome or should have prevented.

2.12 CONTRACT RENEWAL

Contractor and the State of Montana, State Procurement Bureau, agree that this contract may, upon mutual agreement and according to the terms of the existing contract, be extended in one (1) year intervals for a period not to two (2) additional years. This extension is dependent upon legislative appropriations and in no case may this contract run past September 30, 2006.

At the end of the contract or renewal period, the State reserves the right to purchase natural gas, upon mutual agreement with the contractor, on a month-to-month basis at the established contract price per DKT or an agreed upon indexed price until such time as a new contract is in effect.

2.13 CONTRACTOR'S OBLIGATIONS

Contractor shall provide the following services on behalf of the facility:

- a) Provide an interruptible supply of natural gas on a best efforts basis to the Miles City MDU border station.
- b) Assume the role of "Shipper" on the WBI system on behalf of the facility, and pay all balancing penalties as the shipper.
- c) Act as agent for nominating and balancing facility's volumes of gas on the MDU system.
- d) Remit to WBI all applicable fees for Interruptible Transport including balancing penalties and transport and tariff rates incurred by facility for volumes of gas delivered to the MDU Miles City town border station on a "pass-through" basis.
- e) Invoice the facility on a monthly basis, itemizing applicable current WBI fees, and the commodity price of the gas as established by the bid, based on actual volumes of gas delivered.

2.14 OBLIGATIONS OF THE STATE

The facility shall perform the following services:

- a) Consume the natural gas furnished on a best efforts basis.
- b) Payment of monthly invoices based on the volumes of gas nominated, adjusted for actual usage in the month following.
- c) Work closely with the contractor to determine nomination volumes in the event that daily variance penalties are in effect.
- d) An obligation to purchase all natural gas volumes from the contractor throughout the term of the contract.

3.0 CONTRACT PRICING:

The contractor hereby agrees to provide the Pine Hills Youth Correctional Facility, Miles City, Montana with an interruptible natural gas supply, on a dry basis, at the prices listed below.

1. Fixed pricing, for the period from November 1, 2003 through March 31, 2004, estimated contract quantity of 9,028 DKT:

Price of natural gas only, exclusive of WBI Interruptible Transport rates:

\$4.38/DKT

2. Index price, plus/minus CIG monthly index, for the period from October 1, 2003 through October 31, 2003 and April 1, 2004 through September 30, 2004, estimated contract quantity of 4,023 DKT:

Margin of Price Plus/Minus CIG Index:

+ (Plus) \$0.04/DKT

4.0 GAS CONSUMPTION STATISTICS:

Pine Hills YCF, Miles City, Montana

Month	2002-2003 Usage/DKT	Month	2001-2002 Usage/DKT
September	1,056	September	236
October	1,057	October	787
November	1,445	November	1,310
December	1,754	December	1,715
January	2,120	January	1,820
February	1,925	February	2,208
March	1,784	March	1,084
April	665	April	706
May	520	May	300
June	330	June	88
July	175	July	293
August	220	August	401
Total	13,051	Total	10,098